

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

2005 APR -1 A 11:48

IN RE:

CASE NO.: 05-40045-FDS

CITIBANK, N.A., AS TRUSTEE, )  
PLAINTIFF )  
VS. )  
JOHN P. PHELAN, WENDY M. PHELAN, )  
DAVID LAFRIE, THE UNITED STATES )  
OF AMERICA, O'CALLAGHAN )  
CONSTRUCTION CO., and THE )  
COMMONWEALTH OF )  
MASSACHUSETTS DEPARTMENT )  
OF REVENUE )  
DEFENDANTS )

Now comes the defendant, O'Callaghan Construction Co., and answers the above-captioned complaint as follows:

1. The defendant, O'Callaghan Construction Co., is without knowledge to either admit or deny the allegations contained in Paragraph 1 of Plaintiff's Complaint.
2. The defendant, O'Callaghan Construction Co., admits the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. The defendant, O'Callaghan Construction Co., cannot admit or deny the allegations contained in Paragraph 3 as they are unknown to the defendant.
4. The defendant, O'Callaghan Construction Co. cannot admit or deny the allegations contained in Paragraph 4 as they unknown to the defendant.
5. The defendant, O'Callaghan Construction Co. cannot admit or deny the allegations contained in Paragraph 5.
6. The defendant admits the allegations contained in Paragraph 6 of the Plaintiff's Complaint and Interpleader.
7. The defendant, O'Callaghan Construction Co. admits the allegations contained in Paragraph 7 of plaintiff's Complaint.

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**FACTS**

8. The defendant, O'Callaghan Construction Co. is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 8.
9. The defendant, O'Callaghan Construction Co. is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 9.
10. The defendant, O'Callaghan Construction Co., is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 10.
11. The defendant, O'Callaghan Construction Co., is without knowledge sufficient to either admit or deny the allegations contained in Paragraph 11.
12. The defendant, O'Callaghan Construction Co. cannot admit or deny the allegations of subsections a, b, c and d of Paragraph 12 of Plaintiff's Complaint. With regard to subsection e., the defendant, O'Callaghan Construction Co. admits that it is a holder of an execution dated 8/16/04 and recorded 8/20/04 in the Worcester County Registry of Deeds, Book 34426, Page 281, in the amount of \$8,726.84; however, further answering states that it is also the holder of an attachment which was allowed on 4/12/04, and recorded at the Worcester County Registry of Deeds, in Book 33343, Page 236. As the execution was recorded within 30 days of said the issuance of the execution, the date for priority for terminations is the date of the original attachment, namely 4/16/04. The defendant can neither admit or deny the allegations in subsection f.

**COUNT I**  
**DECLARATORY JUDGMENT**

13. Defendant admits and denies the allegations in Paragraph 13 as admitted and denied previously.
14. The defendant can neither admit or deny the allegations in paragraph 14 as it calls for thoughts and impressions of a third party.
15. The defendant can neither admit or deny the allegations in Paragraph 15 as it calls for thoughts and impressions of a third party.
16. The defendant can neither admit or deny the allegations in Paragraph 16 as it calls for a question of law, and therefore, denies the allegations.

WHEREFORE, the defendant requests that this Honorable Court determine the priority of the alleged liens on this property and that it be awarded the full amount of

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its execution, together with statutory interest, and whatever other relief this Court deems just.

RESPECTFULLY SUBMITTED,

O'CALLAGHAN CONSTRUCTION  
CO., INC.,  
By Its Attorney,

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Edwin H. Howard  
B.B.O. #241700  
BONVILLE & HOWARD  
154 Prichard Street  
Fitchburg, MA 01420

CERTIFICATE OF SERVICE

I, Edwin H. Howard, attorney for the within named defendant, O'Callaghan Construction Co., hereby certify that I have, this 31<sup>st</sup> day of March, 2005, mailed a copy of the within Answer to Plaintiff's Complaint, postage prepaid, to the attorney for the plaintiff, Raymond Pelote, Harmon Law Office, P.O. Box 610389, Newlon Highlands, MA 02461, and to Barbara Healy Smith, United States Attorney's Office, One Courthouse Way, Suite 9200, Boston, MA 02210, and Lydia Bottome Turanchick, Trial Attorney, Tax Division, U.S. Department of Justice, P.O. Box 55, Ben Franklin Station, Washington, DC 20044.

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Edwin H. Howard

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